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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,814	03/11/2002	Chikako Shimizu	220474USOPT	9351
22850	7590	01/12/2005		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER SHERRER, CURTIS EDWARD	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,814

Applicant(s)

SHIMIZU ET AL.

Examiner

Curtis E. Sherrer, Esq.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/12/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-9,11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 11, and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 4-9, 11 and 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is again rejected as being indefinite because the scope of the phrase “rough flavor components” is unknown. Applicants respond by amending the phrase to include the phrase “is a causative substance for stale flavor or a precursor thereof.” This raises the issue of the indefiniteness of the phrase “stale flavor.” The amendment has not removed the indefiniteness of the claims, but has possibly added to the non-clarity of the claims.

The rejection of claim 20 is obviated in view of the explanation for the phrase “degree of bitterness,” as set forth on page 19, lines 15-25.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 4-6 11, and 13-20 are anticipated rejected under 35 U.S.C. 102(b) as being anticipated by Katzke *et al.* (U.S. Pat. No. 6,001,406) (“Katzke”).

Katzke teaches the treatment of beverages such as beer with cationic and anionic (basic) exchange resins (col. 3, line 22 to col. 4, line 30 and examples). The examples perform an accelerated aging test that shows that it took longer for a haze to be produced. While it appears that Katzke only examined the removal of haze causing proteins, it is inherent that the prior art process also removed the claimed compounds, because both process, as claimed, are the same.

As to the process for producing the malt beverage (see claim 7), i.e., beer, (as stated in previous Office actions) these steps are inherently the steps used by the industry to produce beer. It is noted that applicants state in their specification, pages 10-13, that the claimed steps are those inherently known in the art.

Katzke also teaches that which is known in the prior art. Specifically, Soviet patent 1,451,159 is mentioned as teaching the treatment of beer with strongly basic macro crosslinked sorbent (anion exchanger) based on copolymers of styrene. (Col. 2, lines 1-12). Again, because the prior art process and the claimed process is the same, the claimed compounds are inherently reduced.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katzke.

Katzke teaches that cited above, but is silent as to whether a filtration occurs after the resin treatment. Katzke does teach filtering prior to treatment and it would have been obvious to those of ordinary skill in the art to add the resin at any stage in the brewing process because selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results. *In re Burhans*, 154 F.2d 690, 69 USPQ 30 (CCPA 1946).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.

Primary Examiner

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